

SENATE BILL REPORT

SHB 2727

As Reported By Senate Committee On:
Judiciary, February 29, 2008

Title: An act relating to the rights of deceased personalities.

Brief Description: Extending personality rights to deceased persons.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Lantz, Pedersen, Rodne, Goodman, Williams and Green).

Brief History: Passed House: 2/14/08, 94-0.

Committee Activity: Judiciary: 2/26/08, 2/29/08 [DP, w/oRec].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, McDermott and Weinstein.

Minority Report: That it be referred without recommendation.

Signed by Senator Roach.

Staff: Robert Kay (786-7405)

Background:

In 1998 the Legislature enacted the Personality Rights Act, which established that every person has a property right in the use of his or her name, voice, signature, photograph, or likeness. The property right is exclusive to the person during his or her lifetime. It may be assigned or licensed while the person is alive. The property right does not expire when the person dies. It may descend in a will or other testamentary transfer, or, if none is available, by the laws of intestate succession. The right exists whether or not it was commercially exploited during the person's lifetime.

The duration of the property right depends upon whether the person's name, voice, signature, photograph, or likeness has commercial value. If it has commercial value, the person is considered a personality. Deceased personalities include all such persons who have died since 1948. For deceased personalities, the property right exists for 75 years after death. For deceased individuals not considered personalities, the property right continues for ten years after the individual dies.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Any person who uses a personality's or individual's name, voice, signature, photograph, or likeness without prior consent infringes on this property right, and is liable in an action for damages for the greater of \$1,500 or actual damages, plus any profits attributable to the infringement.

There are several exceptions to the use of a person's name, voice, signature, photograph, or likeness. For example, it is not an infringement if the use is:

- in connection with matters of cultural, historical, political, religious, educational, newsworthy, or public interest;
- for purposes of commentary, criticism, satire, or parody;
- in single original works of fine art that are not published in more than five copies;
- in literary, theatrical, or musical works, and any advertisements for those works;
- in a film, radio, television, or online program, or magazine articles; or
- an insignificant or incidental use.

Summary of Bill: Personality rights exist for all individuals or personalities deceased before, on, or after June 11, 1998, the effective date of the Personality Rights Act of 1998.

When Applicable. The provisions of the act apply to all causes of action commenced on or after June 11, 1998, regardless of when the cause of action arose; and apply to all individuals and personalities, living and deceased, regardless of place of domicile or place of domicile at time of death.

Determination of Rights. Personality rights must be deemed to have existed before June 11, 1998, for purposes of determining who is entitled to the rights recognized under this chapter.

Transferability of Rights. An individual or personality, or any subsequent owner of that individual or personality's personality rights, may freely transfer their interest through any permissible inter vivos or testamentary instrument, regardless of when the transferring instrument was entered or executed.

Personality rights do not expire and are owned and enforceable by those designated in a testamentary instrument or by intestate succession upon the death of the person, regardless of whether the law of the deceased person's domicile, residence, or citizenship, recognizes a similar or identical property right.

Definitions. A definition for "deceased individual" is added. A deceased individual is any individual, regardless of the individual's place of domicile, residence, or citizenship at the time of death, who has died since 1988.

The language used to define "deceased personality" is modified to include the phrase, "regardless of the personality's place of domicile, residence, or citizenship at the time of death or otherwise."

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute Bill: PRO: Several recent judicial decisions, construing the Washington Personality Rights Act of 1998, have created confusion over when the Act applies, whether a will or trust executed prior to the Act is effective to transfer the personality rights to the named beneficiaries or trustees, and whether the right is enforceable in Washington for all deceased personalities or individuals. This bill clarifies what was the original intent of the drafters of the 1998 Act: that it protects the personality rights of individuals who were deceased prior to the effective date of the Act in 1998; that inter vivos or testamentary transfers, and inheritance, of personality rights prior to the effective date of the Act in 1998 are governed by the Act; and, that the personality rights created by the 1998 Act regarding uses in Washington of a person's name, voice, signature, photograph or likeness can be enforced in Washington regardless of the state in which a personality is domiciled at the time of the personality's death. Washington is the home to several successful media and technology companies that have entered into license agreements with estates which permit uses in advertising and merchandising. These companies, relying on the original intent of the drafters of the 1998 Act, have relied on the assumption that under the Act the estates with which they have negotiated the uses in fact held the personality rights to the uses. The recent court decisions, which have held that the Act did not protect uses when the personality was deceased, or a transfer of personality rights occurred before the effective date of the Act in 1998 or when a personality died domiciled in a state other than Washington, created the need for this bill. This bill clarifies the original intent of the Act that personality rights be covered by the Act in these situations.

Persons Testifying: PRO: Representative Pedersen, sponsor; Dave Green, Corbis Corporation.